IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 9 of 2006
WITH
CIVIL APPLICATION NO.522 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAYATRIBEN JAYANTILAL MEHTA & 2 - Appellant(s)

Versus

MEHTA ARVINDBHAI JAYANTILAL & 7 - Defendant(s)

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Appearance :
MR. J.R. NANAVATI for Appellant(s) : 1 - 3.
None for Defendant(s) : 1 - 5, 8,
MR. M.I. MERCHANT for Defendant(s) : 6 - 7.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 24/01/2006

ORAL JUDGMENT

This Appeal from Order arises out of an order passed by learned Judge, Presiding over City Civil Court No.19, on 29/4/2005, below Exhs.6 and 7 (notice of motion) in Civil Suit No.2487 of 2004.

2. The appellants are the plaintiffs before the trial Court and the respondents are the defendants. They are *inter se* related by relationship of brothers and sisters, except respondents No.6 and 7.

3. The case of the plaintiff is that they are co-owners of the suit property upon demise of their mother, Jasvidhyaben Mehta. Their case is that respondents No.1 to 5 have acted in an illegal manner and have sold property to respondents No.6 and 7, so as to violate the rights of the plaintiffs-appellants as co-owners. The plaintiffs, therefore, by notice of motion sought injunction against respondents No.1 to 7 against sale, mortgage, gift or alienation or transfer in any manner, so also, against change of possession and creation of any right, lien or charge over the property.

4. The trial Court, after considering the case of the other side, came to a conclusion that respondents No.6 and 7 are bona-fide purchasers of the property and no injunction can be granted against them. The trial Court, also observed that the plaintiffs' right, if any, ultimately upheld, can be executed against respondents-defendants No.1 to 5 and, therefore,

dismissed the notice of motion by the order impugned.

5. This appeal challenges the said order on the ground that the trial Court has committed an error in coming to the conclusion that respondents No.6 and 7 are bona-fide purchasers and no injunction can be granted and right of the plaintiff, if any can be executed against respondents No.1 to 5. The documentary evidence relied upon by the trial Court i.e. Mark 21/2 is only a xerox copy and does not bear the signature of deceased-Jasvidhyaben Mehta. Apart from that, the document is a document of nomination and the nominees receive the property for and on behalf of the legal heirs. This aspect has been overlooked by the trial Court. The appellants also challenge the order of the trial Court on the ground that respondents No.6 and 7 cannot be said to be a bona-fide purchaser. The title clearance certificate relied upon by them does not bear the pedigree and, therefore, Solicitor has not made any inquiry with the vendors, which he ought to have made. The other documents also, do not appear to have been properly examined by the Solicitor, while issuing the title clearance certificate and, therefore, the appeal may be entertained.

6.Learned Advocate, Mr.Nanavati, appearing for appellant has reiterated this very ground. He, submitted that the question of bona-fide purchaser may not be of any relevance in suit of present nature. He, submitted that document produced at Mark 21/2 is a xerox copy, which bears signature of the office bearers of the Society, but was not of Jasvidhyaben Mehta. No reliance could have been placed or given by the trial Court on this document. Even, if it is accepted as genuine, then also, it is a document of nomination. The trial Court has committed an error in coming to the conclusion that the plaintiffs have waived their right, therefore, the appeal may be admitted and injunction may be granted. Mr.Nanavati, has also submitted that, recently respondents No.6 and 7 have demolished the property and therefore, injunction against them may be granted against making any further change in the property. Although, in the plaint no such prayer is made.

7.Learned Advocate, Mr.Merchant, appearing on caveat, on behalf of respondents No.6 and 7, has vehemently opposed this appeal. According to him, the property was purchased by respondents No.6 and 7 by a registered

sale-deed dated 13/12/2002, which was registered on 16/12/2002. Prior thereto on 11/11/2002, an agreement to sell was also entered into between the parties. Respondents No.6 and 7 have purchased the property after obtaining a title certificate from Solicitors. Before purchasing the property, an advertisement was published in the daily Gujarati newspaper on 24/2/2002, to which no objection was raised by any one. Mr.Merchant, has drawn attention of this Court to the fact that appellants No.1 and 3 are staying at Ahmedabad and No.2 is staying at Visnagar, which is also not at a far of distance from Ahmedabad, and therefore, it cannot be said that the purchase by respondents No.6 and7 is a clandestine transaction. It was entered into after a public notice by a registered sale-deed. Mr.Merchant, submitted that the order impugned is passed on 29/4/2005. The appeal, was preferred on 14/6/2005, but was not circulated till to-day. Civil Application for injunction is filed only on 21/1/2006 and as such, the appellants' conduct needs to be noted. Mr.Merchant, submitted that even after the order on 20/10/2005, the respondents No.6 and 7 have published a notice in daily Gujarati newspaper, Gujarat Samachar about intended sale of property, to which

also, no one has raised any objection and, suddenly when the property sought to be developed, this Civil Application is filed and appeal is circulated. Mr.Merchant, submitted that the law helps the vigilant and not the person who slip over their rights. He, submitted that the appeal may not be entertained.

8.This Court, has examined the rival side contentions.

9.Undisputedly, the plaintiffs' claim, right over the suit property as co-owners, whether they have any such right, is a matter yet to be adjudicated upon. Admittedly, the suit property was sold by respondents No.1 to 5 to respondents No.6 and 7, by a sale-deed executed on 13/12/2002 and registered on 16/12/2002. Before the sale-deed was executed, an agreement to sell was entered into and prior thereto a public notice was published in a newspaper on 24/2/2002 about the proposed transaction. Yet never any objection was raised by the appellants. The purchaser i.e. respondents No.6 and 7, had also obtained a title clearance certificate from Solicitors, H.Desai & Company. Thus, after the sale-deed was executed, nothing happens for two years and suddenly the suit is

filed in the year 2004.

10.The trial Court, therefore, cannot be said to have committed any error in coming to the conclusion that respondents No.6 and 7 are bonafide purchasers of the property. The contentions raised by learned Advocate, Mr.Nanavati, that the Solicitor has not property probed into the matter before issuing a certificate, cannot be of any virtue to the appellants. The respondents No.6 and 7, in their action, have taken all precautions before purchasing the property. On the other hand, the appellants have initiated their action by filing suit after two years of purchase.

11.Apart form this, the right in the property is claimed by the appellants against respondents No.1 to 5 as co-owners and the grievance, if any, that they can have, has to be against respondents No.1 to 5 only. The right that is asserted by the appellants is yet to be adjudicated. Factually, when it is asserted for the first time, the property was already sold and purchased by respondents No.6 and 7. As such, there is no question of granting any injunction against respondents No.6 and 7 and when admittedly, the property is sold by

respondents No.1 to 5, there is question of granting any injunction against them, against transfer or alienation in any manner.

12.The conduct of the appellants is required to be recorded. The suit is filed after two years. Present appeal though filed within period of limitation is not got circulated for seven months. Alongwith the appeal, no application for injunction is filed and, thereafter, the application is filed seeking following reliefs.

"that the Honourable Court may be pleased to issue an injunction restraining the opponents from selling, transferring or alienating the property in dispute or demolishing the premises or making any new construction on the land and allow this application."

12.1 It transpires that the property was already demolished when the application was filed and still a relief against demolition of the premises is sought. It is also worth a note that the appellants have not raised any objection in response to the advertisement published in the Gujarati Daily Newspaper, Gujarat Samachar, on 20/10/2005 about intended of sale of the property by respondents No.6and 7 and then, after three months this application is filed and appeal got

circulated. In the opinion of this Court, no interference is called for. Appeal must fail and stands dismissed. Civil Application No.522 of 2006 is disposed of accordingly.

(A.L.DAVE, J.)

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